



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 11, 1998

Ms. Julie B. Ross  
Haynes & Boone, L.L.P.  
201 Main Street, Suite 2200  
Fort Worth, Texas 76102

OR98-3052

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120322.

The City of Coppell (the "city"), which you represent, received three requests from the Coppell Gazette. The city has assigned numbers 4380-4382 to the requests. Request number 4380 is for the "written reprimand filed against Officer Michael Scott regarding his accusations against Officer Harm." You contend that this document is excepted from disclosure under section 552.103 of the Government Code. Request number 4381 is for the "internal complaint filed by Officer Harm on March 13, 1998 regarding Michael Scott." After searching its files, the city has "determined that no such documents exists." Therefore, you have withdrawn your request for an opinion on request number 4381. Request number 4382 is for the "written report filed against Officer Harm filed by Officer Scott." You contend that this document is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue in request numbers 4380 and 4382.

Section 552.103(a) of the Government Code, the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for information to be excepted under section 552.103(a).

You contend that the documents at issue are related to reasonably anticipated litigation involving Mr. Danny Harm. You state that Mr. Harm is currently appealing his termination from the Coppell Police Department to a city appeal board. You also state that based on conversations between city representatives and Mr. Harm, you believe that Mr. Harm will file a lawsuit against the city if the city does not rescind his termination. After reviewing your arguments, we find that the prospect of litigation between the city and Mr. Harm is too speculative for section 552.103(a) to apply. Furthermore, you have not established that Mr. Harm's appeal hearing should be considered litigation for the purposes of section 552.103(a).

You also contend that the documents at issue are related to pending litigation involving Mr. Michael Scott. You indicate that Mr. Scott was terminated from his position as police officer with the Coppell Police Department following an internal affairs investigation. You submitted a copy of an August 24, 1998, petition to show that Mr. Scott has filed suit against the city for unlawful retaliation under Government Code sections 554.001 et seq., the "Whistleblower Act." You contend that the documents at issue "are central to the claims made against the City by Mr. Scott in his lawsuit . . . and will be evidence in [the] lawsuit." We agree that the documents at issue are related to the pending litigation involving Mr. Scott. However, information that has either been obtained from or provided to the opposing party in anticipated litigation, through discovery or otherwise, is not excepted from disclosure under section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). One of the documents at issue was written by Mr. Scott, and the other document at issue was written to Mr. Scott. Therefore, we conclude that the city may not withhold these documents from disclosure under section 552.103(a). Because the documents are not excepted from disclosure under section 552.103(a), the city must release the documents to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with the first name "Karen" and last name "Hattaway" clearly distinguishable.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 120322

Enclosures: Submitted documents

cc: Mr. Michael Ryan  
Coppell Gazette  
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(w/o enclosures)